

General Information Letter: Overpayment credited against subsequent year's estimated tax liability may only be refunded pursuant to a return or claim for refund for the subsequent year.

April 19, 1999

Dear:

This is in response to your letter dated March 23, 1999. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

I would appreciate guidance, in the form of a written response, on the following issue.

Taxpayer, xxxxxxxxxxxxxxxx, filed a Form IL-1120 for the year ended March 31, 1998. The return, as filed, indicated an overpayment in the amount of \$15,015, which was to be credited to Estimated Tax for the subsequent year ended March 31, 1999.

Taxpayer has determined that for the year ended March 31, 1999, it has a taxable loss and will have no tax liability.

Taxpayer requested a refund of the "credited" Estimated Taxes by filing a Claim for Refund under the provisions of 35 ILCS 5/909(d). Attached are copies of correspondence sent to and received from the Illinois Department of Revenue, denying the Claim for Refund.

The Department (the Business Inquiry Unit) cites 86 Illinois Administrative Code, Ch. I, §100.9400 as its authority, taking the position that the ES payments may only be refunded after a tax return for the year ended March 31, 1999 is filed.

The Department further asserted that an amended return for March 31, 1998, where the taxpayer requests a *refund* of the overpayment, rather than a crediting to a subsequent year, is also ineffective as a Claim for Refund. Taxpayer finds no authority in the Illinois statutes for such an assertion.

Taxpayer believes that the payments relate to the year ended March 31, 1998, and are merely credited to the current year. In any event, Taxpayer has fulfilled the requirements of 35 ILCS 5/909(d), and believes that it is entitled to a refund of Estimated Taxes, without regard to whether a Return has yet been filed for the year ended March 31, 1999.

Taxpayer requests either a refund of the tax payments, or statutory authority for denial.

Response

Section 100.9400 does govern the response to your inquiry, but the Subsection that more precisely applies is 100.9400(f). However, that paragraph is no more helpful to your position. The proper form for claiming a refund for a corporation is IL-1120X, but use of that form has limitations.

If the "last day prescribed for timely filing" has passed (100.9400(f)(3)) and there is no "federal change" (100.9400(f)(4)), the form can be used only when there has been an Illinois "change". A copy of the regulation is enclosed.

A change is defined in the statutes at IITA Section 506(b) where federal changes are discussed. It is an alteration in the way you arrive at your tax liability.

The instructions for Form IL-1120X explain it most succinctly. They say:

"Your change can occur from a state or federal change, such as

- an amendment of your federal income tax return,
- an adjustment made by the Internal Revenue Service (IRS), or
- any other recomputation or redetermination, and

your change affects items used to compute your Illinois net income, net loss, or credits."

Since you wish to change only your taxpayer election as to how an overpayment is to be treated, the Form IL-1120X is not appropriate. You may recover those overpayments as a refund only by filing a timely return for the year which ended on March 31, 1999.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax